and $800 or 2 months' imprisonment on the third charge.

Held: the punishments imposed were excessive and in disregard of the provisions of section 71 of the Penal Code and must therefore be set aside.

CRIMINAL REVISION.

Ong Hock Thye Ag.C.J.: This matter came to my notice purely by chance. On July 28, 1965 a husband and wife were convicted in the sessions court, Kuala Lumpur, as driver and owner respectively, of a car which the former used for the purpose of carrying passengers for hire or reward, in contravention of sections 92(1), 22(2) and 74(1) of the Road Traffic Ordinance, 1958. Section 92 prohibits the use of unlicensed public service vehicles; section 22 relates to the user of a vehicle for a purpose for which the licence fee chargeable is higher than that charged for the licence actually held; and section 74 relates to the user of a vehicle in such a manner that the insurance against third party risks ceases to be in force.

The maximum penalty provided for an offence under section 92(1) is imprisonment for 6 months, or a fine not exceeding $2,500 or both. Under subsection (4) the court may, in addition, make an order for forfeiture of the vehicle concerned. For an offence under section 22(2) the maximum penalty is a fine of $1,000 only and for an offence under section 74 such penalty is imprisonment up to 3 months or a fine not exceeding $1,000 or both, together with disqualification from driving.

I was shocked to observe that the president's sentence on the first defendant was (i) a fine of $2,000, or 4 months imprisonment in default, (ii) a fine of $800, or 2 months imprisonment in default, (iii) a fine of $800, or 2 months imprisonment in default and (iv) disqualification from driving for one year. This defendant is at present serving a cumulative sentence of 8 months' imprisonment.

The second defendant was fined $200, $100 and $200 or to undergo 2 months, 1 month and 2 months' imprisonment in default. I am informed that she was released from prison on August 16, 1965 on payment of $434.50. In her case nothing requires to be done.

A total fine, however, of $3,600 or 8 months' imprisonment in default, on the first defendant, is so Draconian that it cannot possibly be allowed to stand. The couple were fined a total of $4,100. They had probably also lost the deposit and instalments paid on their car, which must run to at least $2,000.

The punishment imposed on the first defendant, furthermore, was in total disregard of the provisions of section 71 of the Penal Code.

It is rather a pity that I had not come to know of this case earlier. In the circumstances the sentence of imprisonment in default is reduced so that the first defendant should be discharged forthwith and I do so order.

Sentence of imprisonment in default reduced.

GOVINDOO & ANOR. v. LEONG KONG WING & ORS.

[O.C.J. (Ismail Khan J.) November 13, 1965]

[Seremban — Civil Suit No. 98 of 1965]

Practice and Procedure — Interlocutory judgment — Setting aside — R.S.C. 1957, O. 13 rr. 5 & 12.

The applicants applied to set aside an interlocutory judgment for damages for negligence on the ground that the plaintiffs had failed to file a statement of claim at the time such judgment was entered against them; and also on the ground that the applicants had a substantial defence to the claim.

Held: (1) as the action was for pecuniary damages that is in this case, damages for tort, it was not necessary for the plaintiff to file a statement of claim before obtaining the interlocutory judgment;

(2) the court has an absolute discretion to set aside such a judgment and as the defendants had a defence of denial of liability and contributory negligence, the judgment will be set aside on the defendants paying the costs thrown away.

CIVIL SUIT.

N. Ramachandran for the plaintiffs.

Cheng Tim Pin for the defendants.

Ismail Khan J.: In this application made by way of summons in chambers the defendants seek to set aside the interlocutory judgment entered for the plaintiffs on the grounds that the plaintiffs had failed to file an affidavit of service or the statement of claim, at the time such judgment was entered against them. The defendants rely on Order 13 rule 12 which reads:

"In all actions not by the rules of this Order otherwise specially provided for, in case the party served with the writ does not appear within the time limited for appearance, upon the filing by the plaintiff of a proper affidavit of service, and if the writ is not specially indorsed under Order 3, Rule 6, of a statement of claim, the action may proceed as if such party had appeared, subject, as to the actions where an account is claimed, to the provisions of Order 15."

This rule applies in cases not otherwise provided for by this Order. I cannot see how the defendants can invoke this rule.

The plaintiff's action is for damages for actionable negligence, that is, damages for tort, and that is provided for by rule 5 which is as follows:—

"Where the writ is indorsed with a claim for pecuniary damages only, or for detention of goods with or without a claim for pecuniary damages, and the defendant fails, or all the defendants, if more than one, fail, to appear, the plaintiff may enter interlocutory judgment and the judgment shall direct an enquiry to be held to assess the value of the goods and the damages, or the damages only, as the case may be, in respect of the

causes of action disclosed by the indorsement on the writ of summons. But the court or a judge may order a statement of claim or particulars to be filed before any assessment of damages, and may order the value or damages, or either of them, to be ascertained in any other manner."

The words "pecuniary damages" therein include damages for tort. In such a case in default of appearance the plaintiff before proceeding upon default, has only to file an affidavit of service. 'In my view, this is a regular judgment.' The court has an absolute discretion to set aside such judgment if the defendants could show that they have a substantial ground of defence. The ground of defence disclosed in the defendants' affidavit in support of the application is a denial of liability and in the alternative contributory negligence on the part of the plaintiffs. This would, of course, be a good defence in a running down case.

The judgment is set aside but the defendants have to pay costs thrown away.

Order accordingly.

Solicitors: *N. Ramachandran; Shook Lin & Bok.*

RE LEONG CHEONG KWENG, DECD.

[O.C.J. (Abdul Aziz J.) November 11, 1965]

[K.L. — Originating Petition No. 7 of 1964]

Estate Duty — Valuation of collector — Appeal — Valuation of shares in a private company — Valuation of debts to estate — Estate Duty Enactment, 1941.

This was an appeal against the valuation of the collector for purposes of estate duty of certain properties belonging to the estate of the deceased. Among the assets were shares in a private company and credit balances with a private company.

Held: (1) the assessment of the value of the shares in a private company depends on the estimate of the price which in the opinion of the collector such property would fetch in the open market at the time of the death of the deceased and the court was not prepared to say that the valuation placed by the collector on the shares of the company in this case was manifestly excessive;

(2) debts, even if they are likely to be bad must be brought in for the purposes of assessment of estate duty; if they prove irrecoverable a claim may be made for refund of duty.

Cases referred to:—

(1) *Re the Estate of Wynfreda Jennie Dunbar Hogg deceased* [1938] M.L.J. 193.

(2) *In re J. B. Young deceased* [1955] M.L.J. 108.

(3) *Smyth* v. *Revenue Commissioners* [1931] Ir.R. 643.

ORIGINATING PETITION.

Robert K. C. Hoh for the petitioners.

Chan Loo Thye (Miss) for the respondent.

Cur. Adv. Vult.

Abdul Aziz J.: This is an appeal by way of petition under section 43 of the Estate Duty Enactment 1941 against the decision of the collector with respect to the valuation, for purposes of estate duty, of certain properties of the deceased who died on the 28th September 1959. The court is only concerned with four items of the property, namely:—

(a) Land held under M.C. No. 1386 Lot 3 section 92A Town of Kuala Lumpur;

(b) 30/691 shares in Kwong Yee Loong Engineering and Foundary Works, 34B, Chan Sow Lan Road, Kuala Lumpur;

(c) Shares in Fook Heng Loong Tin Mine, Pertang, Negri Sembilan;

(d) Credit balance with Leong Cheong Kweng Mines Limited.

Originally the valuations placed by the collector on items (a) and (b) were $2,290,740 and $7,889.42 respectively but these figures were later reduced to $127,705 and $3,919.52 respectively. Still not satisfied with the valuation of the collector the petitioners now apply to the court for the ascertainment of the proper values of the four items and in accordance with rule 3 has contended that the properties should be valued as follows:—

Item (a)	$27,600;
Item (b)	$ 1,500;
Item (c)	$ 5,727.21;
Item (d)	the credit balance of $296,415.40 be regarded as irrecoverable as the company was insolvent.

In regard to item (a) i.e. mining land M.C. No. 1386 Lot 3 section 92A, Town of Kuala Lumpur, it is common ground that prior to 18th May 1959 the land was worked by the deceased under a sub-lease and that on the 18th May 1959 the deceased obtained a mining certificate over the said area and that on the 16th July 1959 the deceased granted a 'Hup Tong' to Leong Cheong Kweng Mines Limited, a private limited company composed of the deceased and his children. The 'Hup Tong' was for a period of one year with option to renew and tribute was at the rate of 12%. At the commencement of the trial the petitioners maintained that although the tribute fixed by the 'Hup Tong' was at 12% the deceased was in fact entitled to only 10% as 2% had been given away by a written undertaking to one Valliappa Chettiar. Upon examination of the evidence of Valliappa Chettiar and the document concerned it was discovered that the document was not legally enforceable as there was no consideration and it was not stamped. For purposes of the valuation tribute will be reckoned at 12%. It has been agreed by both parties that the approximate content of tin ore in the land is 4,440 piculs but excluding the amang dumps. The petitioners' expert, Mr. Hazlitt in his report stated that the mine was not efficiently operated and that if the lode in the land was mined correctly it would produce much more. Mr. Hazlitt, however, admitted that in valuing the